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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/068,700 | 02/05/2002 | John R. Liddicoat | VIA-16 | 9211 |
| 7590 | 10/06/2003 | | EXAMINER | |
| Pandisco & Pandisco 470 Totten Pond Road Waltham, MA 02451-1914 | | | CHATTOPADHYAY, URMI | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3738 | |
| | | | DATE MAILED: 10/06/2003 | |

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Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|-----------------------------|-----------------|------------------|
| Offic Action Summary | Application No. | Applicant(s) |
| | 10/068,700 | LIDDICOAT ET AL. |
| Examiner | Art Unit | |
| Urmi Chattopadhyay | 3738 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 August 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.

5) Claim(s) 10-12 is/are allowed.

6) Claim(s) 1 and 4-7 is/are rejected.

7) Claim(s) 2,3,8,9 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 05 February 2002 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5,7</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-12 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 13-17 have been withdrawn from consideration for being drawn to a non-elected invention.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "56" has been used to designate both "proximal portion 56" of the wire, as mentioned on page 16, line 16 and "flexible bridges", as mentioned on page 17, line 3. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. Applicant is reminded that whatever changes are made to the specification or drawings, any necessary changes should also be made to the drawings or specification, respectively.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 5 is indefinite because it is not commensurate in scope with that of claim 4, on which it depends. Claim 4 allows the second configuration to be either more curved or less curved. How can a second configuration being more curved then be further limited by claim 5? The examiner suggests changing claim 5 so that it first states that the second configuration is less curved, and then saying that the less curved configuration is substantially straight.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Langberg et al. (USPN 6,402,781 as cited in applicant's IDS).

Langberg et al. discloses a mitral annuloplasty device with all the elements of claim 1. See Figure 2 for an apparatus for reducing mitral regurgitation comprising a bendable elongate body (40) adapted to be inserted into the coronary sinus of a patient in the vicinity of the posterior leaflet of the mitral valve. The body (40) is adjustable between a first delivery configuration and a second configuration (column 3, lines 62-67). The body (40) comprises a

flexible spine (58) with a proximal and a distal end. See Figure 2A for a flexible wire (56) being mounted on the spine and having a distal end fixed to the spine proximate to the distal end of the spine and a proximal portion extending from the proximal end of the spine (see column 7, lines 58-60 for distal end of spine extending distal to the point of attachment of the wire). See column 8, lines 12-17 for axial movement of the wire changes the spine from the first to second configuration to exert a force on the posterior annulus and thereby reduce mitral regurgitation.

Claims 4 and 5, see column 8, lines 12-17 for second configuration being more curved.

Claim 6, see column 7, lines 20-23 for spine being provided with barbs thereon.

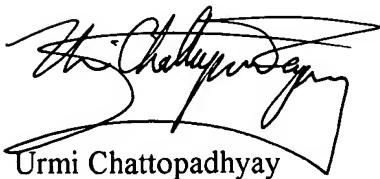
Claim 7, see column 8, lines 6-13 for channel for wire.

Allowable Subject Matter

7. Claims 10-12 allowed.
8. Claims 2, 3, 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Urmī Chattopadhyay whose telephone number is (703) 308-8510 and whose work schedule is Monday-Friday, 9:00am – 6:30pm with every other Friday off. The examiner's supervisor, Corrine McDermott, may be reached at (703) 308-2111. The group receptionist may be reached at (703) 308-0858.

Should the applicant wish to send a fax for official entry into the file wrapper the Group fax number is (703) 872-9306. Should applicant wish to send a fax for discussion purposes only, the art unit fax number is (703) 308-2708.



Urmī Chattopadhyay

Art Unit 3738

September 30, 2003



Primary Examiner

David J. Isabella
Primary Examiner